

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

04 JAN 23 PM 3:44

IN THE MATTER OF)

McBride & Sons Homes, Inc.)
Thornbury Crossing)

Respondent)
_____)

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

Docket No. CWA-07-2003-0287

ORDER AUTHORIZING FACSIMILE FILING

Pursuant to 40 C.F.R. §22.5(a)(1), facsimile filing of the telefaxed signature page
(page 4) of the Consent Agreement and Final Order in this proceeding is hereby authorized.

Dated: January 23, 2004

Robert L. Patrick

Robert L. Patrick
Regional Judicial Officer

IN THE MATTER OF, McBride & Son Homes, Inc., Thornbury Crossing, Respondent
Docket No. CWA-07-2003-0287

CERTIFICATE OF SERVICE

I certify that the foregoing Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Dan J. Breedlove
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Facsimile and First Class Pouch Mail to:

Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460


and

Honorable William B. Moran
Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Brian E. McGovern, Esq.
McCarthy, Leonard, Kaemmerer, Owen & McGovern
10141 Swingley Ridge Road, Suite 300
St. Louis, Missouri 63017

Dated: 1/26/04


Kathy Robinson
Regional Hearing Clerk

04 JAN 23 PM 3:44

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

IN THE MATTER OF)	
)	Docket No. CWA-07-2003-0287
)	
McBride & Son Homes, Inc.)	
Thornbury Crossing)	CONSENT AGREEMENT AND
O'Fallon, Missouri)	FINAL ORDER
)	
Respondent)	
)	
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	
)	

I. PRELIMINARY STATEMENT

These proceedings were initiated pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (hereafter "CWA"), 33 U.S.C. § 1319(g). On September 16, 2003, the United States Environmental Protection Agency (EPA or Complainant), Region VII issued a Complaint, Notice of Proposed Penalty and Notice of Opportunity for Hearing (Complaint) to McBride & Son Homes, Inc. (Respondent). The Complaint alleged violations of the CWA by Respondent at its Thornbury Crossing construction site in O'Fallon, Missouri.

The Complainant and Respondent subsequently entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (CAFO) is the result of such negotiations and resolves all issues relating to the administrative claims arising from the allegations in the Complaint.

II. CONSENT AGREEMENT

1. For purposes of this proceeding, Respondent admits the jurisdiction of the EPA regarding this matter and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and the Final Order set forth below.
2. Respondent neither admits nor denies the factual allegations set forth in the Complaint.
3. Respondent agrees not to contest the terms and conditions set forth in this CAFO in this or subsequent proceedings to enforce the terms of this CAFO, and agrees not to appeal the Final Order set forth below.
4. Respondent explicitly waives its right to a hearing on any issue of fact or law set forth in the Complaint.
5. EPA has considered the appropriateness of the penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and has determined that the appropriate penalty for settlement of the violations set forth in the Complaint is Four Thousand Two Hundred Dollars (\$4,200). Payment of this penalty shall satisfy all claims arising out of the facts alleged in the Complaint.
6. Respondent consents to the issuance of the Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.
7. Respondent's failure to pay the civil penalty assessed herein in accordance with the provisions of this Order may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon at the applicable statutory rate.
8. Respondent and EPA each agree to bear their own costs and attorneys' fees.
9. Each signatory of this CAFO certifies he or she is fully authorized to enter into the terms of the CAFO.
10. Respondent certifies by the signing of this CAFO that it is in compliance with the requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

In the Matter of:
McBride & Son Homes
Consent Agreement/Final Order

III. FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Four Thousand Two Hundred Dollars (\$4,200) within thirty (30) days of receipt of a copy of this fully executed CAFO. Payment shall be by cashier's or certified check, made payable to "Treasurer, United States of America," and referencing EPA Docket No. CWA-07-2003-0287, and remitted to:

EPA - Region VII
Attn.: Regional Hearing Clerk
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

A copy of the check shall be mailed to:

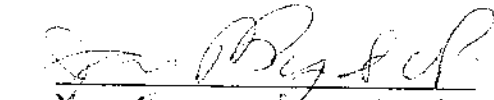
J. Daniel Breedlove
Assistant Regional Counsel
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

2. Compliance with the terms of this CAFO satisfies all claims arising out of the facts alleged in the Complaint. This CAFO shall terminate after satisfaction by Respondent of the requirements of this Final Order.

3. This executed CAFO shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101.

In the Matter of:
McBride & Son Homes
Consent Agreement/Final Order

For the Respondent:

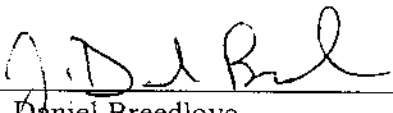

Name: James R. McBride Sr.
Title: Vice President
McBride & Sons Homes, Inc.

1-21-01
Date

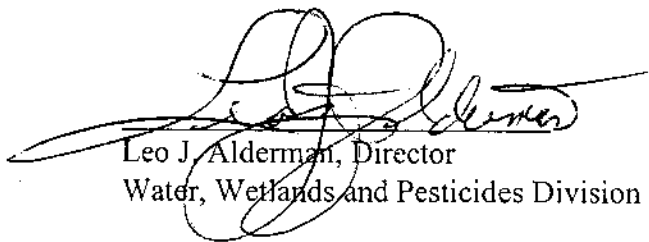
In the Matter of:
McBride & Son Homes
Consent Agreement/Final Order

For the Complainant:

The United States Environmental Protection Agency

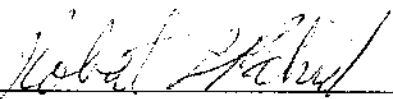

J. Daniel Breedlove
Assistant Regional Counsel

1/21/2004
Date


Leo J. Alderman, Director
Water, Wetlands and Pesticides Division

1/21/04
Date

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional
Judicial Officer.


Robert Patrick
Regional Judicial Officer

January 23, 2004
Date

In the Matter of:
McBride & Son Homes
Consent Agreement/Final Order

CERTIFICATE OF SERVICE


I hereby certify that on the 24th day of January 2004, I filed the original Consent Agreement and Final Order, along with one copy of this document, with the Regional Hearing Clerk, EPA Region VII, 901 North Fifth Street, Kansas City, Kansas 66101. I also mailed copies of this document to the following:

VIA POUCH MAIL AND FACSIMILE

Honorable William B. Moran
United States Environmental Protection Agency
Office of the Administrative Law Judges
Mail Code 1900L
1200 Pennsylvania Ave. N.W.
Washington, D.C. 20460

VIA FIRST CLASS MAIL AND FACSIMILE

Brian E. McGovern, Esq.
McCarthy, Leonard, Kaemmerer, Owen & McGovern
10141 Swingley Ridge Road, Suite 300
St. Louis, Missouri 63017-0743


Name

1/21/2004
Date

IN THE MATTER OF, McBride & Son Homes, Inc., Bristol Ridge Estates, Respondent
Docket No. CWA-07-2003-0287

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Dan J. Breedlove
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

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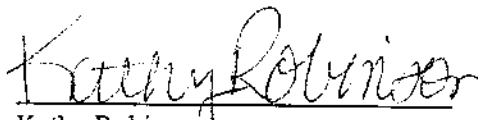
and

Honorable William B. Moran
Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
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Return Receipt Requested, to:

Brian E. McGovern, Esq.
McCarthy, Leonard, Kaemmerer, Owen & McGovern
10141 Swingley Ridge Road, Suite 300
St. Louis, Missouri 63017

Dated: 1/26/04


Kathy Robinson
Regional Hearing Clerk